

A woman with short grey hair and black-rimmed glasses is smiling broadly. She is wearing a black sweater over a white collared shirt and a rainbow-colored lanyard. The lanyard has a badge that says "You for being a important part of my story x". She is holding a large yellow checkmark. In the foreground, a person's arm is visible, stirring a large white bowl on a green cutting board. The background shows a kitchen with a stainless steel sink and a blue sign on the wall.

Tuition extra

Searching, screening and confiscation

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1. Searching

Tuition Extra staff can search a student for any item if the student agrees.

The Group Head of Education has designated the setting's DSLs to have a statutory power to search students or their possessions, without consent, where they have reasonable grounds for suspecting that the student may have a prohibited item.

Prohibited items are:

- knives and weapons
- alcohol
- illegal drugs
- stolen items
- any article that the member of staff reasonably suspects has been, or is likely to be used:
 - to commit an offence, or to cause personal injury to, or damage to property of; any person (including the student)
- tobacco and cigarette papers
- fireworks
- pornographic images

Extent of the search – clothes, possessions, desks and lockers

What the law says:

The person conducting the search may not require the student to remove any clothing other than outer clothing.

'Outer clothing' means clothing that is not worn next to the skin or immediately over a garment that is being worn as underwear but 'outer clothing' includes hats; shoes; boots; gloves and scarves.

'Possessions' means any goods over which the student has or appears to have control – this includes desks, lockers and bags.

A student's possessions can only be searched in the presence of the student and another member of staff, except where there is a risk that serious harm will be caused to a person if the search is not conducted immediately and where it is not reasonably practicable to summon another member of staff.

Also note

The power to search without consent enables a personal search, involving removal of outer clothing and searching of pockets; but not an intimate search going

further than that, which only a person with more extensive powers (e.g. a police officer) can do.

Lockers and desks

Under common law powers, education providers are able to search lockers and desks for any item provided the student agrees. Education providers can also make it a condition of having a locker or desk that the student consents to have these searched for any item whether or not the student is present.

If a student does not consent to a search (or withdraws consent having signed a consent form) then it is possible to conduct a search without consent but only for the “prohibited items” listed above.

Use of force

Members of staff can use such force as is reasonable given the circumstances when conducting a search for knives or weapons, alcohol, illegal drugs, stolen items, tobacco and cigarette papers, fireworks, pornographic images or articles that have been or could be used to commit an offence or cause harm. Such force cannot be used to search for items banned under the education provider rules.

2. Before searching

A search can be considered if the member of staff has reasonable grounds for suspecting that the student is in possession of a prohibited item or any item identified in the education provider’s rules for which a search can be made, or if the student has agreed. See paragraphs 2-4 on powers to search.

The authorised member of staff should assess how urgent the need for a search is and should consider the risk to other students and staff.

Before any search takes place, the member of staff conducting the search should explain to the student why they are being searched, how and where the search is going to take place and give them the opportunity to ask any questions.

The authorised member of staff should always seek the co-operation of the student before conducting a search. If the student is not willing to co-operate with the search, the member of staff should consider why this is. Reasons might include that they:

- are in possession of a prohibited item;
- do not understand the instruction;
- are unaware of what a search may involve; or
- have had a previous distressing experience of being searched.

If a student continues to refuse to co-operate, the member of staff may sanction the student in line with the setting's behaviour policy, ensuring that they are responding to misbehaviour consistently and fairly.

If the member of staff still considers a search to be necessary, but is not required urgently, they should seek the advice of the Group Head of Education, designated safeguarding lead (or deputy) or pastoral member of staff who may have more information about the student. During this time the student should be supervised and kept away from other students.

If the student still refuses to co-operate, the member of staff should assess whether it is appropriate to use reasonable force to conduct the search. A member of staff can use such force as is reasonable to search for any prohibited items identified in paragraph 3, but not to search for items which are identified only in the education provider rules. The decision to use reasonable force should be made on a case-by-case basis. The member of staff should consider whether conducting the search will prevent the student harming themselves or others, damaging property or from causing disorder.

It should be noted that the use of reasonable force will differ depending on whether the member of staff is searching possessions or the student themselves.

Authorised staff can also search for any item banned by the service rules which has been identified in the rules as an item which may be searched for.

Being in possession of a prohibited item – especially knives, weapons, illegal drugs or stolen items – may mean that the student is involved, or at risk of being involved, in anti-social or criminal behaviour including gang involvement, and in some cases may be involved in child criminal exploitation. A search may play a vital role in identifying students who may benefit from early help or a referral to the local authority children's social care services.

If the designated safeguarding lead (or deputy) finds evidence that any child is at risk of harm, they should make a referral to children's social care services immediately (as set out in part 1 of Keeping children safe in education). The designated safeguarding lead (or deputy) should then consider the circumstances of the student who has been searched to assess the incident against potential wider safeguarding concerns.

3. Confiscation

The DSLs can seize any prohibited item found as a result of a search. They can also seize any item, they consider harmful or detrimental to education provider discipline.

The Education providers' obligations under the European Convention on Human Rights (ECHR)

Under article 8 of the European Convention on Human Rights students have a right to respect for their private life. In the context of these particular powers, this means that students have the right to expect a reasonable level of personal privacy.

The right under Article 8 is not absolute, it can be interfered with but any interference with this right by an education provider (or any public body) must be justified and proportionate.

The powers to search in the Education Act 1996 are compatible with Article 8. An education provider exercising those powers lawfully should have no difficulty in demonstrating that it has also acted in accordance with Article 8. This advice will assist education providers in deciding how to exercise the searching powers in a lawful way.

4. Screening

What the law allows:

The Education provider can require students to undergo screening by a walk-through or hand-held metal detector (arch or wand) even if they do not suspect them of having a weapon and without the consent of the students.

The Education providers' statutory power to make rules on student behaviour¹ and their duty as an employer to manage the safety of staff, students and visitors² enables them to impose a requirement that students undergo screening.

Any member of the provision's staff can screen students.

Also note:

If a student refuses to be screened, the setting may refuse to have the student on the premises. Health and safety legislation requires an education provider to be managed in a way which does not expose students or staff to risks to their health and safety and this would include making reasonable rules as a condition of admittance.

If a student fails to comply, and the setting does not let the student in, the provider has not excluded the student and the student's absence should be treated as unauthorised. The student should comply with the rules and attend.

¹ Education Act 1996, s. 77

² Education Act 1996, s. 77

This type of screening, without physical contact, is not subject to the same conditions as apply to the powers to search without consent.

5. Searching with consent

The Education providers' common law powers to search:

Education staff can search students with their consent for any item.

Also note:

Education providers are not required to have formal written consent from the student for this sort of search – it is enough for the teacher to ask the student to turn out his or her pockets or if the teacher can look in the student's bag or locker and for the student to agree.

Education providers should make clear in their behaviour policy and in communications to parents and students what items are banned.

If a member of staff suspects a student has a banned item in his/her possession, they can instruct the student to turn out his or her pockets or bag and if the student refuses, the teacher can apply an appropriate punishment as set out in the education provider's behaviour policy.

A student refusing to co-operate with such a search raises the same kind of issues as where a student refuses to stay in a detention or refuses to stop any other unacceptable behaviour when instructed by a member of staff – in such circumstances, education providers can apply an appropriate disciplinary penalty.

6. Searching without consent

What the law says:

What can be searched for?

- Knives or weapons
 - Alcohol
 - illegal drugs
 - stolen items
 - Tobacco and cigarette papers
 - Fireworks
 - pornographic images
- and

- Any article that the member of staff reasonably suspects has been, or is likely to be, used to commit an offence, or to cause personal injury, or damage to property; and

Any item banned by the education provider rules which has been identified in the rules as an item which may be searched for.

Can I search?

Yes, if you are a member of staff and authorised by the Group Head of Education.

Under what circumstances?

You must be the same sex as the student being searched; and there must be a witness (also a staff member) and, if possible, they should be the same sex as the student being searched.

There is a limited exception to this rule. You can carry out a search of a student of the opposite sex to you and / or without a witness present, but only where you reasonably believe that there is a risk that serious harm will be caused to a person if you do not conduct the search immediately and where it is not reasonably practicable to summon another member of staff.

When can I search?

If you have reasonable grounds for suspecting that a student is in possession of a prohibited item.

Also note:

The law also says what must be done with prohibited items which are seized following a search.

The requirement that the searcher is the same sex as the student and that a witness is present will continue to apply in nearly all searches. Where it is practicable to summon a staff member of the same sex as the student and a witness then the teachers wishing to conduct a search must do so.

7. Establishing grounds for a search

Staff can only undertake a search without consent if they have reasonable grounds for suspecting that a student may have in his or her possession a prohibited item. The staff member must decide in each particular case what constitutes reasonable grounds for suspicion. For example, they may have heard other students talking about the item or they might notice a student behaving in a way that causes them to suspect that the student is concealing a prohibited item.

In the exceptional circumstances when it is necessary to conduct a search of a student of the opposite sex or in the absence of a witness, the member of staff conducting the search should bear in mind that a student's expectation of privacy increases, as they get older.

The powers allow education provider staff to search regardless of whether the student is found after the search to have that item. This includes circumstances where staff suspect a student of having items such as illegal drugs or stolen property which are later found not to be illegal or stolen.

Setting staff may wish to consider utilising CCTV footage in order to make a decision as to whether to conduct a search for an item.

8. Searches for items banned by the setting rules

An item banned by the education provider rules may only be searched for under these powers if it has been identified in the education provider rules as an item that can be searched for.

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Under section 89 of the Education Act 2006 and the School Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012, the Head of Education must publicise the education provider behaviour policy, in writing, to staff, parents and students at least once a year.

9. Location of a search

Searches without consent can only be carried out on the education provider premises or, if elsewhere, where the member of staff has lawful control or charge of the student, for example on education provider trips in England or in training settings.

The powers only apply in England.

10. During the Search

An appropriate location for the search should be found. Where possible, this should be away from other students. The search must only take place on the education provider premises or where the member of staff has lawful control or charge of the student, for example on a education provider trip.

11. Who can Search

The law states the member of staff conducting the search must be of the same sex as the student being searched. There must be another member of staff present as a witness to the search.

There is a limited exception to this rule.

This is that a member of staff can search a student of the opposite sex and/or without a witness present only: if the member of staff carrying out the search reasonably believes there is risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency; and in the time available, it is not reasonably practicable for the search to be carried out by a member of staff who is same sex as the student or it is not reasonably practicable for the search to be carried out in the presence of another member of staff.

When a member of staff conducts a search without a witness they should immediately report this to another member of staff, and ensure a record of the search is kept.

12. The extent of the search

A member of staff may search a student's outer clothing, pockets, possessions, desks or lockers.

The person conducting the search must not require the student to remove any clothing other than outer clothing. 'Outer clothing' means any item of clothing that is not worn wholly next to the skin or immediately over a garment that is being worn as underwear, as well as hats, shoes, boots or scarves.

'Possessions' means any goods over which the student has or appears to have control - this includes desks, lockers and bags.

A member of staff is able to search lockers and desks or other personal spaces at the education provider for any item provided the student agrees. Education providers can make it a condition of having the locker or space that the student agrees to have these searched. If the student withdraws their agreement to search, a search may be conducted both for the prohibited items listed in paragraph 3 and any items identified in the education provider rules for which a search can be made.

A student's possessions can only be searched in the presence of the student and another member of staff, except where there is a risk that serious harm will be caused to a person if the search is not conducted immediately and where it is not reasonably practicable to summon another member of staff. See paragraphs 25-27 on who can conduct a search.

The member of staff may use a metal detector to assist with the search.

The member of staff's power to search outlined above does not enable them to conduct a strip search.

13. Strip Searching

A strip search is a search involving the removal of more than outer clothing (see paragraph 29). Strip searches on education provider premises can only be carried out by police officers under the Police and Criminal Evidence Act 1984 (PACE) Code A and in accordance with the Police and Criminal Evidence Act 1984 (PACE) Code C. While the decision to undertake the strip search itself and its conduct are police matters, education provider staff retain a duty of care to the student(s) involved and should advocate for student wellbeing at all times.

Before calling police into education provider, staff should assess and balance the risk of a potential strip search on the student's mental and physical wellbeing and the risk of not recovering the suspected item. Staff should consider whether introducing the potential for a strip search through police involvement is absolutely necessary, and should always ensure that other appropriate, less invasive approaches have been exhausted. Once the police are on education provider premises, the decision on whether to conduct a strip search lies solely with them, and the role of the education provider is to advocate for the safety and wellbeing of the student(s) involved.

Unless there is an immediate risk of harm and where reasonably possible, staff should inform a parent of the student suspected of concealing an item in advance of the search, even if the parent is not acting as the appropriate adult. Parents should always be informed by a staff member once a strip search has taken place. Education providers should keep records of strip searches that have been conducted on education provider premises and monitor them for any trends that emerge.

14. After-care following a strip search

Students should be given appropriate support, irrespective of whether the suspected item is found. If an item is found, this may be a police matter, but should always be accompanied by a safeguarding process handled by the education provider which gives attention to the student's wellbeing and involves relevant staff, such as the designated safeguarding lead (or deputy). Safeguarding should also be at the centre of support following a strip search in which the item is not found, both in the sense of supporting the student to deal with the experience of being searched, and regarding wider issues that may have informed the decision to conduct a strip search in the first place. In both cases, students should feel that they have an opportunity to express their views regarding the strip search and the events surrounding it. Education provider staff should give particular consideration to any students who have been strip searched more than once and/or groups of

students who are more likely to be subjected to strip searching with unusual frequency, and consider preventative approaches.

15. After a search

Whether or not any items have been found as a result of any search, education providers should consider whether the reasons for the search, the search itself, or the outcome of the search give cause to suspect that the student is suffering, or is likely to suffer harm, and/or whether any specific support is needed. Where this may be the case, education provider staff should follow the education provider's child protection policy and speak to the designated safeguarding lead (or deputy) as set out in Part 1 of Keeping children safe in education. They will consider if pastoral support, an early help intervention or a referral to children's social care is appropriate. If any prohibited items are found during the search, the member of staff should follow the guidance set out below.

If a student is found to be in possession of a prohibited item listed in paragraph 3, then the staff member should alert the designated safeguarding lead (or deputy) and the student should be sanctioned in line with the education provider's behaviour policy to ensure consistency of approach.

16. Recording searches

Any search by a member of staff for a prohibited item listed in paragraph 3 and all searches conducted by police officers should be recorded in the education provider's safeguarding reporting system, including whether or not an item is found. This will allow the designated safeguarding lead (or deputy) to identify possible risks and initiate a safeguarding response if required. Headteachers may also decide that all searches for items banned by the education provider rules should be recorded. Staff members should follow the education provider policy in these cases.

Education providers are encouraged to include in the record of each search:

- the date, time and location of the search
- which student was searched
- who conducted the search and any other adults or students present
- what was being searched for
- the reason for searching
- what items, if any, were found
and
- what follow-up action was taken as a consequence of the search.

Education providers who conduct a high number of searches should consider whether the searches fall disproportionately on any particular groups of students by analysing the recorded data. In such cases where searching is falling disproportionately on any group or groups, they should consider whether any actions should be taken to prevent this.

17. Informing parents

Education providers should reinforce the whole-education provider approach by building and maintaining positive relationships with parents. Parents should always be informed of any search for a prohibited item listed in paragraph 3 that has taken place, and the outcome of the search as soon as is practicable. A member of staff should inform the parents of what, if anything, has been confiscated and the resulting action the education provider has taken, including any sanctions applied.

Education providers should consider that in some circumstances it might also be necessary to inform parents of a search for an item banned by the education provider policy.

Any complaints about searching, screening or confiscation should be dealt with through the normal education provider complaints procedure.

18. Special Educational Needs/ Medical Needs

Any student may be upset by being searched without consent. Some students with behavioural problems might react strongly to being searched or confined in a private room.

The County Council Policy on Positive Handling should be followed on the use of restrictive physical interventions for students.

Education providers should not conduct a search themselves, but should call the police, when they expect a student may violently resist being searched.

Headteachers should not normally exempt students from a search solely on grounds of their special educational or medical needs. However, education providers should take account of any additional sensitivities, e.g. by spending more time discussing their suspicion with a child with learning difficulties or medical needs, before a search, and should involve the special educational needs co-ordinator.

Any 1-to-1 supervisor of a student being searched should also be present at the search. Under the Equality Act 2010, education providers must acknowledge their legal duty to make reasonable adjustments for disabled students and students with SEN.

19. Electronic devices

Electronic devices, including mobile phones, can contain files or data which relate to an offence, or which may cause harm to another person. This includes, but is not limited to, indecent images of children, pornography, abusive messages, images or videos, or evidence relating to suspected criminal behaviour.

As with all prohibited items, staff should first consider the appropriate safeguarding response if they find images, data or files on an electronic device that they reasonably suspect are likely to put a person at risk.

Staff may examine any data or files on an electronic device they have confiscated as a result of a search, if there is good reason to do so.

If the member of staff conducting the search suspects they may find an indecent image of a child (sometimes known as nude or semi-nude images), the member of staff should never intentionally view the image, and must never copy, print, share, store or save such images. When an incident might involve an indecent image of a child and/or video, the member of staff should confiscate the device, avoid looking at the device and refer the incident to the designated safeguarding lead (or deputy) as the most appropriate person to advise on the education provider's response. Handling such reports or concerns can be especially complicated and education providers should follow the principles as set out in Keeping children safe in education. The UK Council for Internet Safety also provides the following guidance to support education provider staff and designated safeguarding leads: Sharing nudes and semi-nudes: advice for education settings working with children and young people.

If a member of staff finds any image, data or file that they suspect might constitute a specified offence, then they must be delivered to the police as soon as is reasonably practicable.

In exceptional circumstances members of staff may dispose of the image or data if there is a good reason to do so. In determining a 'good reason' to examine or erase the data or files, the member of staff must have regard to the following guidance issued by the Secretary of State.

In determining whether there is a 'good reason' to examine the data or files, the member of staff should reasonably suspect that the data or file on the device has been, or could be used, to cause harm, undermine the safe environment of the education provider and disrupt teaching, or be used to commit an offence.

In determining whether there is a 'good reason' to erase any data or files from the device, the member of staff should consider whether the material found may constitute evidence relating to a suspected offence. In those instances, the data or files should not be deleted, and the device must be handed to the police as soon as it is reasonably practicable. If the data or files are not suspected to be evidence

in relation to an offence, a member of staff may delete the data or files if the continued existence of the data or file is likely to continue to cause harm to any person and the student and/or the parent refuses to delete the data or files themselves.

20. Confiscation as a disciplinary penalty

Education providers' general power to discipline enables a member of staff to confiscate, retain or dispose of a student's property as a disciplinary penalty, where reasonable to do so.

The law protects members of staff from liability in any proceedings brought against them for any loss of, or damage to, any item they have confiscated, provided they acted lawfully.